

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO THE CONNECTION)	
OF CUSTOMER PROVIDED COIN ACTIVATED)	CASE NO. 8883
TELEPHONES TO THE TELEPHONE NETWORK)	

O R D E R

On January 11, 1984, Long Distance Telephone Savers, Inc., Coin-Tel, Inc., and McDonald Wrightsel (the "Movants") filed a Petition for Rehearing and/or Reconsideration of the Commission's Order in this proceeding dated December 22, 1984, which refused to allow customer-provided coin-operated public telephones to be attached to the public switched telephone network.

At the Commission's direction, direct testimony was prefiled on behalf of General Telephone Company, Cincinnati Bell, South Central Bell, and Movants (of witnesses Robert Moyer, Robert Albertson, William F. Fane and James W. Freeman), and a hearing was held on May 1, 1984.

Toward what was apparently the end of a lengthy cross-examination of Movants' second witness, Albertson, Movants requested permission to withdraw their Petition (Transcript of Evidence ("TE"), p. 204, 205), and the other parties indicated they had no objection. The hearing was adjourned. On May 2, 1984, Movants filed a written motion for leave to "withdraw the

Petition for Rehearing and all written and oral testimony and exhibits offered since the filing of the Petition for Rehearing."

(Emphasis supplied.) It is contended by Cincinnati Bell that the underlined portion of this motion "expanded" upon the oral motion made at the hearing. By Order of June 4, 1984, the Commission directed Movants and Cincinnati Bell (and invited other parties) to file memoranda concerning the authority of the Commission to expunge a portion of an evidentiary record.

Movants argue that fundamental fairness and due process entitle them to withdraw (expunge) all written and oral testimony and exhibits filed in connection with their Petition, since the hearing was not completed. They express a concern that the evidentiary matter sought to be withdrawn (or expunged) may be "introduced in another proceeding as part of the record" in this case "without having been subjected to the process of full cross-examination and rebuttal," and insist that all parties agreed to the withdrawal of "everything that had been filed" in connection with the Petition. Cincinnati Bell's position is that Commission statutes and regulations require "a full and complete record [of all hearings] shall be kept" by a court reporter, transcribed, and be available for the record on appeal or other purposes, and that the Commission has no power to expunge this matter from the record.

The transcript of the hearing (TE, pp. 204, 205) reveals that counsel for movants first announced her decision to withdraw only Movants' Petition for Rehearing (see TE, p. 104), and then, in the course of discussion with the presiding officer and counsel

for the other parties, added "and everything that has been filed since then." (See TE, p. 205.) Understandably, misunderstanding has arisen as to exactly what was intended by the oral motion. In their written motion, Movants adopted the latter course, that leave was requested to withdraw "everything" in connection with the Petition for Rehearing.

The Commission's view of this matter makes it unnecessary to decide whether the adversary parties agreed to the withdrawal of part of the evidentiary record as well as withdrawal (abandonment) of the Petition for Rehearing. The motion for leave to withdraw the Petition for Rehearing and/or Consideration, both in its oral and written forms, is addressed to the sound discretion of the Commission. The Commission is committed to the principles of fundamental fairness and due process, both procedural and substantive, invoked by Movants. However, no such questions are presented in this case by merely letting the record stand as it was when Movants chose to move for what is, in effect, a voluntary dismissal of their Petition for Rehearing.

CONCLUSION

IT IS THEREFORE ORDERED that permission for leave to withdraw the Petition for Rehearing and/or Reconsideration is granted and withdrawal of any portion of the record is denied.

Done at Frankfort, Kentucky, this 28th day of June, 1984.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary